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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Writ Petition No. 5433 of 1984
Date of Decision : 7.9.2007

Banarsi Lal

...Petitioner

Versus

Director General-cum-Inspector General of Police, Punjab and another

...Respondents

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CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL

Present: Mr. H.S.Mann, Advocate with
Mr. Kamaldeep Singh Sidhu, Advocate for the petitioner.

Mr. Palvinder Singh, Senior Deputy Advocate General, Punjab, for the respondents.

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RAJESH BINDAL, J.

The prayer made in this writ petition is for quashing of order dated July 3, 1984 (Annexure P-1) whereby the petitioner was prematurely retired on completion of 50 years of age, who was also having more than 25 years of qualifying service. The order was passed in exercise of powers under Rule 3 (1) (a) of the Punjab Civil Services (Premature Retirement) Rules, 1975(for short 'the Rules").

The pleaded facts, in brief, are that the petitioner joined Punjab Police Force as Constable on August 1, 1950 after passing matriculation examination. He was promoted as Head Constable on November 1, 1975 and was allowed to cross efficiency bar vide order dated February 18, 1984 with effect from January 1, 1984. The claim of the petitioner is that during his entire service career, he was never subjected to departmental enquiry

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involving major punishment. The petitioner, relying on the order permitting him to cross efficiency bar, submitted that even if there was anything against the petitioner prior thereto, the same was wiped out. There was nothing in service record of the petitioner, which prompted the authorities for passing the impugned order prematurely retiring him at the age of 50 years.

In the written statement filed, respondents disputed the claim made by the petitioner stating therein that petitioner was awarded two punishments of censure in the years 1972 and 1980. The conduct of the petitioner as Head Constable was commented upon adversely in the Confidential Report for the period April 1, 1980 to September 30, 1980 and From September 12, 1981 to March 31, 1982. While screening his entire record at the age of 50 years, it was opined that petitioner should be retired compulsorily in public interest.

While reiterating the submissions made in the writ petition, learned counsel for the petitioner submitted that while allowing the petitioner to cross the efficiency bar vide order dated February 18, 1984, his entire service record on that date had been considered and found to be in order. The order passed prematurely retiring the petitioner just after four months certainly is not sustainable as there was nothing against the petitioner during this period. He referred to and relied upon judgments of this Court in **Chanwat Singh Patwari Vs. State of Haryana and another 1990 (2) SLR 301, Rameshwar Dutt Vs. State of Haryana and another 1990 (2) SLR 347, Ram Sarup Vs. State of Haryana and others 1989 (2) SLR 126, Darshan Singh, Deputy Superintendent of Police Vs. The State of Punjab & others 1988 (2) Northern Legal Reports 176, Avtar Singh Vs. The State of Haryana and others 1995(2) AIJ 485 and Sukhdeo Vs. Commissioner Amravati Division, Amravati and another (1996) 5 Supreme Court Cases 103.**

On the other hand, learned counsel appearing for the respondents submitted that merely crossing of efficiency bar does not mean that petitioner's entire service record even prior to that is wiped out, when issue comes for his retention in service at the age of 50 years. He further

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submitted that in his ACR for the period from April 1, 1980 to September 30, 1980, it has been recorded that his reputation for honesty was not satisfactory. Similarly his devotion to duty was also recorded as unsatisfactory. It was further recorded that he is also in the habit of not joining the parades. Further remarks were recorded by the then D.S.P. to the following effect:-

> "He was habitual absentee from Malkhana. Many cases failed for non-production of case property. Report sent vide No.2139-M/DSP/P, dated 29.10.1980."

Similarly for the period from September 12, 1981 to March 31, 1982, it was recorded that his intelligence was below average though there was no complaint regard honesty, finding him to be not punctual, overall it was recorded that he was average type of Head Constable, which adverse remarks were directed to be conveyed. Further submitted that petitioner had mentioned number of two writ petitions in the Index for the purpose, namely, **Civil Writ Petition No.2932 of 1984 (Satpal ASI Vs. Deputy Inspector General of Police, Patiala Range, Patiala and another)** decided on February 1, 1985 and **Civil Writ Petition No. 4204 of 1984 (Tilak Raj Vs. Inspector General of Police, Punjab and another)** decided on February 4, 1985, which have already been dismissed by this Court.

I have heard learned counsel for the parties and with their assistance perused the material on record.

Rule 3 of the Rules enables the appropriate authority to prematurely retire Government servant in public interest, in case he had completed 25 years of qualifying service or had attainted the age of 50 years while issuing him prior notice in writing, which shall not be for a period of less than three months. It is in exercise of powers under this rule that petitioner has been prematurely retired. In Chanwant Singh Patwari's case (Supra), this court held that in cases of average report, which is not equivalent to adverse report, an official cannot be prematurely retired merely on that basis. Similar was the view expressed in Rameshwer Dutt and Darshan Singh's cases (Supra). In Ram Sarup's case (Supra), it was

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held by this Court that where there is only adverse report through out the service career, which pertained to period 5 years prior to the retirement, merely on that basis order of compulsorily retirement was held to be bad. In Avtar Singh' case it is held that no action can be taken on the basis of vague and indefinite remarks.

In Satpal Singh's case (Supra) the claim made by the petitioner therein was rejected by this Court, finding in his service record, more than one entry doubting honesty and integrity, however, claim to the effect that entries prior to date of crossing of efficiency bar could not be considered, was rejected.

In the present case, all what has been shown by the respondents to justify the premature retirement of the petitioner is a report from the period from April 1, 1980 to September 30, 1980 where it is mentioned that his reputation for honesty was not satisfactory, however, for the period after that it was recorded that there was no complaint about his honesty. No other adverse report for any period during his service career in police force from 1950 till such time he was prematurely retired in 1984 after completion of nearly 34 years of service was produced except two punishments of censures, which also were awarded to the petitioner in 1972 and 1980.

From a consideration of the material produced by the respondents to justify action against the petitioner and the law laid down by this Court, as referred to above, I am of the view that there was no material available with the respondents, which justified premature retirement of the petitioner. Mere one entry in the column of integrity being not satisfactory, without referring to any specific instance is not enough to declare an employee as dead wood.

Accordingly, the impugned order dated dated July 3, 1984 (Annexure P-1) is quashed. The impugned order prematurely retiring the petitioner was passed in 1984 at the age of 50 years, meaning thereby the petitioner could have superannuated by now. Accordingly, the only question is of granting him the financial benefits treating him to be in service upto the age of 58 years. Respondents are directed to calculate the

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financial benefits admissible to the petitioner treating him to be in service upto the age of 58 years and pay the same within a period of three months from the date of receipt of a certified copy of this order.

The writ petition is disposed of in the manner indicated above.

September 07, 2007 **(Rajesh Bindal)**
Pka **Judge**